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Letter dated 5 May 2003 from the Permanent Representative of Cambodia to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to transmit herewith a statement by Sok An, Senior Minister and Minister in Charge of the Office of the Council of Ministers, Head of the Cambodian Government Task Force for Cooperation with Foreign Legal Experts and Preparation of the Proceedings for the Trial of Senior Khmer Rouge Leaders, to the States Members of the United Nations regarding the draft agreement on Khmer Rouge trials, dated 17 April 2003 (see annex).

I should be grateful if the text of the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 109 (b).

(*Signed*) **Ouch** Borith
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

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Annex to the letter dated 5 May 2003 from the Permanent Representative of Cambodia to the United Nations addressed to the Secretary-General

Statement by the Cambodian Government Task Force to the States Members of the United Nations regarding the Draft Agreement on Khmer Rouge trials

On 6 April 2003 the Secretary-General released his report to the General Assembly on Khmer Rouge trials (A/57/769, dated 31 March 2003), in accordance with the General Assembly Resolution 57/228 of 18 December 2002. The General Assembly will shortly consider the Draft Agreement initialled by both parties on 17 March 2003. The Cambodian Government wishes to take this opportunity to make clear its position on the Draft Agreement.

1) We welcome the Draft Agreement and see merit in the Cambodian approach as realised therein. A sovereign state has invited the international community to participate in its national court system, to bring justice in accordance with that state's obligations to prosecute under Article 6 of the Genocide Convention, and with international assistance and participation. As can be seen clearly from the Draft Agreement, every step will involve a joint effort between Cambodians and the international components, and will follow international standards of justice, specifically the International Covenant on Civil and Political Rights (ICCPR) Articles 14 and 15.

As a result of our common effort, and with the important support of the Member States, we have achieved a formula that we believe can help contribute to the development of international humanitarian law, as well as to legal and judicial reform in Cambodia. We understand the Draft Agreement to be fully in accordance with the General Assembly Resolution 57/228 of 18 December 2002, which *welcomed the Law establishing the Extraordinary Chambers* and requested the Secretary-General *to conclude an agreement with the Government of Cambodia, based on previous negotiations on the establishment of the Extraordinary Chambers consistent with the provisions of the present resolution, so that the Extraordinary Chambers may begin to function promptly.*

2) We have travelled a long road to achieve the final text of the Draft Agreement now being presented to the General Assembly. Today, 17 April 2003, we mark exactly 28 years since the Khmer Rouge came to power and the people of Cambodia began our nightmare.

It is now six years since the Cambodian request for UN assistance (June 1997), and we have concluded almost four years of complex and at times difficult negotiations (since August 1999). But we emphasise that we Cambodians have been seeking judicial accounting for the Khmer Rouge crimes for 24 years, and that for most of that time we were waiting for the international community to join us.

We place considerable importance on this Draft Agreement, seeing it as marking a very important milestone. Since 1979 we have been rebuilding our society from zero. We have been seeking to achieve truth, justice and reconciliation by utilising a range of means -- military, political, economic. Truth and reconciliation are already well advanced, and we have today achieved peace throughout the country for the first time in recent history. But we have yet to achieve justice. The Cambodian people deserve a proper judicial accounting and recognition by the international community of the crimes they endured.

The Council of Ministers on 28 March 2003 welcomed and approved the final text of the Draft Agreement and recommended it to the National Assembly for ratification, following its approval by the General Assembly and its formal signing. These steps will bring the draft into its status as an international treaty, which both parties are committed to implement in accordance with the 1969 Vienna Convention on the Law of Treaties. At the same time it will apply as law within the Kingdom of Cambodia.

3) We thank all countries and individuals that have encouraged and assisted this process over the past years, and we now appeal to you to translate such expressions of support into material terms in the following ways:

a) we ask you to approve the final text of the Draft Agreement now before the General Assembly;

b) we ask you to nominate judges and other personnel of the highest calibre, and to make monetary and in kind contributions, so as to ensure that the Extraordinary Chambers are established as soon as possible, and that they meet international standards.

4) We feel constrained to make some remarks on the tone and the content of the Secretary-General's report. We are surprised that the Secretary-General, while considering the Draft Agreement to be "a considerable improvement", has not expressed his welcome for the eventual finalisation of this text as the fruit of our common work, and the successful implementation of the mandate given him by the General Assembly in Resolution 57/228.

Nor does he recommend to the Member States to move forward to approve the Draft Agreement and to establish the Extraordinary Chambers. In fact, in his entire 20-page report the Secretary-General makes only a single recommendation - that the international judges, investigating judge and prosecutor should have "the status of UN officials for the purposes of their terms and conditions of service".

The report is pervaded by an overwhelmingly negative and pessimistic tone, and the Secretary-General repeatedly refers to "doubts" regarding the credibility of the Extraordinary Chambers, and scepticism as to the Cambodian Government's commitment to implementing the Agreement. Not once does he refer to the good faith or honest dealings of the Government throughout the negotiations, nor does he give any credit to securing the unanimous passage of the Law through the National Assembly and Senate.

The Secretary-General has chosen to devote most of his report to revisiting every step of the negotiations, apportioning blame to the Cambodian side for any delays and difficulties. At the same time, he takes this opportunity to make broad criticisms of the general situation of human rights in Cambodia and the weakness of the judiciary.

5) The Secretary-General takes as a leitmotif for his report what he refers to as the "precarious state of the judiciary". We ourselves are the first to be aware of the relative weakness of the Cambodian judiciary and legal system in the face of the challenges it faces -- weaknesses resulting above all from the blows inflicted on the entire Cambodian social fabric by the Khmer Rouge. Indeed, this was one of the principal reasons that we requested assistance from the UN in 1997.

But we need to ask whether the term "precarious" adequately portrays the actuality of the situation today in Cambodia. We would like to point to the significant historical realities we have faced as our state has been engaged in a constant process of renewal and renovation of a profound nature.

a) *legal framework* - we have a firm foundation in our Constitution, adopted in 1993, which includes a clear separation of powers, and recognises and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights. The Constitution accords every Khmer citizen the right to life, personal freedom and security, and it specifies that there shall be no capital punishment.

Following the adoption of this Constitution we have been engaged in large-scale re-working of the existing Civil Code and the Criminal Code, as well as the Law on Criminal Procedure, at the same time as developing important new and fundamental legislation, such as the Statute of the Magistracy and amendments to the Law on the Structure and Functioning of the Supreme Council of the Magistracy.

b) *human resources* - in 1979 when we began our process of rebuilding our country from zero, we had only seven people with legal training. Today we have about 200 judges, with a further 31 new appointees who have university qualifications, including some with master's degrees and PhDs. These judges are located in our three levels of courts, with courts of first instance operating in each of our 24 provinces. We have a fully functioning Ministry of Justice, a Bar Association of over 200 members, and close to 1,000 paralegal personnel.

Some idea of our progress can be seen from initiatives taken just in the past year. We established the Royal School of Magistracy, in partnership with the French National School of Magistracy (ENM) of Bordeaux, one of the most highly respected legal educational institutions in Europe. We have taken measures from within our national budget to increase the salaries of our current judges 10 to 20 fold, to help them resist pressures to seek a living wage outside the proper exercise of their judicial functions. The Supreme Council of the Magistracy has begun a process of inspection of all the courts, and regulation and discipline of the judges and judicial officials. Judges, prosecutors and senior police officers from the capital city and the provinces have been able to participate in a series of seminars and workshops on various aspects of the law, including international standards. And recently the Cambodian Bar Association opened its institute, which law graduates must attend before being admitted to the Bar as practising lawyers.

During the course of our negotiations, and especially during the two rounds of talks this year, we have made significant efforts to explain this situation and the improvements we are striving to implement, and we have invited the Deputy Secretary-General to come and see the functioning of the judiciary with his own eyes. Unfortunately, the Secretary-General in his report makes no reference to any progress having been made.

c) *concrete examples* illustrating improvements in the actual functioning of the judiciary can be seen in several recent and widely noted cases that are of some relevance to the Khmer Rouge trials.

Two major suspects for crimes committed under the period of Democratic Kampuchea are now in detention awaiting the establishment of the Extraordinary Chambers, having been indicted under the 2001 Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

Also, in 2002 the Cambodian judiciary convicted or upheld the convictions on appeal of three Khmer Rouge officers involved in the 1994 Kampot train attack, in which 13 Cambodians were killed and three western backpackers taken hostage and later executed. These decisions are another sign of the judiciary's resolve and capacity to tackle extremely sensitive cases. Within the context of national reconciliation, our judiciary is striving to apply principles of justice on a universal basis.

Our government continues to undertake legal and judicial reform, whose results are beginning to be seen. These reforms give us confidence that we have sufficiently qualified and competent legal professionals to play the roles required in the forthcoming Khmer Rouge trials together with their international counterparts. We wish to refute the notion that our judiciary ought not to be conferred an active and significant role in the process of seeking justice regarding the most serious crimes in our nation's history.

Let us stress that we have requested not only international assistance but also international participation in the trials, and we have agreed to share with the international community the heavy task of judging the serious crimes committed in our own country by our own people. No decision will be taken without their full involvement and agreement. But we believe that many Member States may well share Cambodia's perspective that international standards do not have to mean international control, which seems to be the view of the UN Secretariat.

6) Finally, we wish to make some observations on the financial aspects of the Secretary-General's report:

a) *Financial mechanism* (Paragraphs 72-78)
We note that the Secretary-General has concluded that funding should come through assessed contributions. At the same time we understand that Member States have various opinions as to which mechanism would be preferable, with some Member States clearly favouring voluntary contributions. During our negotiations in New York and Phnom Penh, Cambodia made it clear to the UN delegation that Cambodia does not wish to take a position as to whether the funding for the international component should come from either voluntary contributions or assessed contributions. In any event, Cambodia would certainly need some assistance to help support its share of the burden, and several countries have indicated to Cambodia that they are ready and willing to provide such direct assistance either on a bilateral or multilateral basis.

b) *Estimated requirements* (Paragraphs 56-71)
It is unclear as to whether the Secretary-General's estimates refer only to envisaged expenditure for the international component, or whether they are for the Extraordinary Chambers as a whole, including both national and international components. The Secretariat has not provided the Cambodian side with any

supplementary documentation or more detailed breakdown of figures that could elucidate the general estimates provided in the report. We feel the need to place on record at this stage that we fear that the estimates provided may not be sufficient, if intended to cover the entire operations of the Extraordinary Chambers. Some additional points below refer to specific areas of expenditure.

Premises (Paragraphs 64-65)
We are currently considering a number of options as outlined in the report. The Cambodian government repeats its readiness to make available land and/or buildings appropriate to the needs of the Extraordinary Chambers - for the sessions of the two levels of court; office accommodation for all personnel involved; as well as detention facilities for suspects and housing for witnesses. We do signal here that we hope to receive some outside support to assist in any renovation or construction that may be required to provide facilities of an appropriate standard.

Personnel (Paragraphs 57-63)
We need to discuss mechanisms to develop "esprit de corps" with the Extraordinary Chambers and to avoid a polarisation regarding conditions of work and remuneration. Some countries have indicated a willingness to provide funding support along with any international judges or other personnel they are asked to provide. It is hoped that some similar funding support can be provided to their Cambodian counterparts to reduce the gap between national and international components in the interests of establishing a homogeneous administration of justice.

7) In conclusion, now is the time to reflect on what we have achieved with the finalisation of the text of the Draft Agreement, and to turn our faces to the future with determination. We have before us the historic opportunity to approve an Agreement that can bring into being the Extraordinary Chambers, of a character that is not only the most appropriate for Cambodia today, but is also capable of meeting international standards of justice, fairness and due process of the law. In establishing this body we will be carrying out our obligations to the Cambodian people and to humanity as a whole.

As an expression of our firm commitment and support for the Extraordinary Chambers and for the mechanisms of involvement by the international community in all aspects of their work, the Royal Government of Cambodia has decided to co-sponsor the resolution to approve the text of the Agreement. We are pleased to commend this Draft Agreement to you, the Member States of the United Nations.

Sok An
Senior Minister and Minister in Charge of the Office of the Council of Ministers
Head of the Cambodian Government Task Force for Cooperation with Foreign Legal Experts and Preparation of the Proceedings for the Trial of Senior Khmer Rouge Leaders

Phnom Penh, 17 April 2003